

Application No. 09/307,195
FILED: May 7, 1999
TC Art Unit: 3625
Confirmation No.: 4520

REMARKS

The allowance of Claims 18-24 and 37-40 is gratefully acknowledged.

Claims 1-3, 5-10, 12-14, 16, 25-27, 29-34, 36, 41, 42, and 44-49 have been rejected under 35 U.S.C. 102(e) as being anticipated by Benetti ('843). Claims 4, 11, 17, 28, 35, 43 and 50 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Benetti.

Applicants respectfully transverse the rejections of the claims and have further amended claims 1, 25 and 41 to clarify the patentable distinctions with respect to Benetti.

Firstly, Applicants maintain that there are structural limitations set forth in the rejected claims that distinguish over the teachings of Benetti. Secondly, Benetti is not reasonably capable of performing any function to the extent such a function (e.g. the "coronary bypass procedure" of Claim 1) is recited in the claims.

The claims recite that a flexible cord is "held under tension by the holder" with the artery being positioned between the cord and a surface of the retaining element (See the present application, page 4, lines 14-20, for example). Benetti fails to teach or suggest the structural relationship between the cord and

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the holder that positions the cord relative to the retaining element.

The only structural element disclosed in Benetti that compresses an artery is the occluder 63, shown in FIG. 7, and occluder 42, shown in FIG. 8. There is no disclosure or suggestion in Benetti that a holder be used to position a cord under tension relative to the retaining element that operate in combination to occlude an artery.

The descriptions in Benetti with respect to the use of a suture line such as the description in connection with FIG. 5 at Column 10, or with FIG. 6 at Column 11, do nothing more than attach the lower member 33 or the snap fixture 40 to the heart, respectively. In these embodiments there is no occluder. The only discussion in Benetti that might relate to a "holder" on a "retaining element" is at Column 11, lines 60-67, which refers to a "notch" or a "post." Again, there is no teaching that a suture line be used as an occluder in Benetti. The reference to the "at least one port 70 for receiving a suture line" in connection with FIG. 7 would not enable one skilled in the art to provide the presently recited invention. The occluder 63 in FIG. 7 is not designed to work in combination with a cord to occlude an artery as recited in the amended claims. The occluder 63 is described at

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Column 12, lines 9-14 of Benetti without reference to a suture line.

Claims 30 and 45 are being amended to correct a spelling error.

Concurrently with this Amendment, Applicant is requesting and includes herewith a petition for a three month extension of the term in which to respond to the Office Action.

Applicants respectfully request reconsideration of the rejected claims.

The Examiner is encouraged to telephone the undersigned attorney to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,

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